

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

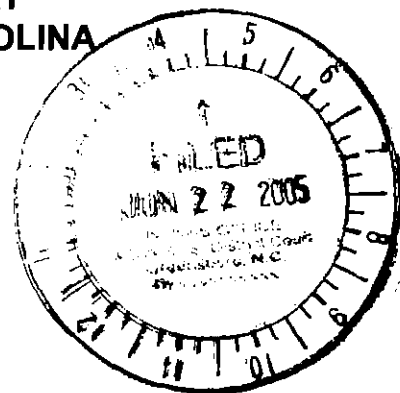
MARK A. LOVELY,

Plaintiff, pro se,

v.

TRIAD INTERNATIONAL  
MAINTENANCE CORP.,

Defendant.



1:05CV00567

**ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the court for a review of the *pro se* Plaintiff's application to proceed *in forma pauperis* (ifp). For the reasons set out below, ifp status will be granted for the limited purpose of entering this order and recommendation, the clerk will be directed to file the complaint, and it will be recommended that the complaint be dismissed.

Plaintiff seeks to proceed ifp against his former employer Defendant Triad International Maintenance Corporation, alleging that the Internal Revenue Service ("IRS") wrongfully placed a levy on his wages and that Defendant wrongfully honored the levy. Plaintiff disputes the tax liability underlying the levy and contends that Defendant violated his right to due process.<sup>1</sup> Since Plaintiff seeks to proceed ifp, the

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<sup>1</sup> As a classic "tax protestor," Plaintiff presents various arguments (apportionment, wages are not income, etc.) that courts have repeatedly rejected.

court must review the complaint to determine whether it is subject to dismissal on the grounds that it is "frivolous or malicious [or] fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2). In its frivolity review, the court must determine whether the complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). A plaintiff fails to state a claim when it appears certain that the plaintiff cannot prove any set of facts which would entitle him or her to relief. The court must accept all well-pled allegations and review the complaint in a light most favorable to plaintiff, *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4<sup>th</sup> Cir. 1993), but facts must be alleged with specificity. *White v. White*, 886 F.2d 721, 724 (4<sup>th</sup> Cir. 1989).

An employer that complies with a Notice of Levy issued by the IRS is immune from suit by the employee as to any claim that arises from compliance with the levy.<sup>2</sup> 26 U.S.C. § 6332(e). *Pawlowske v. Chrysler Corp.*, 623 F. Supp. 569, 570 (N.D. Ill.

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<sup>2</sup> Section 6332(e) states:

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

26 U.S.C. § 6332(e).

1985). The validity of the levy is irrelevant to the immunity afforded the complying employer. *Moore v. General Motors Pension Plans*, 91 F.3d 848 (7<sup>th</sup> Cir. 1996). Thus, Defendant is immune from any suit by Plaintiff based on Defendant's compliance with the IRS levy. It will, therefore, be recommended that Plaintiff's complaint be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2).

For the foregoing reasons, Plaintiff's ifp application is **GRANTED** for the limited purpose of entering this order and recommendation, the clerk is **DIRECTED** to file the complaint, and it is **RECOMMENDED** that the complaint be dismissed for failure to state a claim.

A handwritten signature in black ink, appearing to read 'Wallace W. Dixon', is written over a horizontal line.

Wallace W. Dixon  
United States Magistrate Judge

June 21, 2005